

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of the designation of “private investigator” as an eligible profession for the purchase, sale, and use of body armor.

Date of designation: August 3, 2022

Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession.¹ Pursuant to Executive Law section 144-a, the Department of State (Department) has established criteria for eligible professions requiring the use of body armor, as such term is defined in subdivision 2 of section 270.20 of the Penal Law. Designation of an eligible profession must be supported by a finding that the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor.² The Department may add a profession to the list of eligible professions requiring the use of body armor.³

Findings of fact and analysis

A “private investigator” is someone who conducts investigations for the purpose of obtaining information with reference to any of the following matters:

- crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America;
- the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation;
- the credibility of witnesses or other persons;
- the whereabouts of missing persons;
- the location or recovery of lost or stolen property;
- the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real or personal property;
- or the securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases.⁴

¹ New York Penal Law § 270.21.

² New York Executive Law § 144-a; 19 NYCRR §§ 905.3, 905.1(c), (f).

³ 19 NYCRR §§ 905.2(a), 905.5(a).

⁴ General Business Law §71(1).

A licensed private investigator may perform the services of a watch, guard or patrol agency or bail enforcement agent.⁵ The term “business of watch, guard or patrol agency” and the term “watch, guard or patrol agency” mean a business which is engaged in the business of watch, guard or patrol agency or the business of a security guard company with or without the assistance of any employee or employees.⁶ A “security guard company” is an entity employing one or more security guards or being self-employed as a security guard on either a proprietary basis for its own use or on a contractual basis for use by another person, firm, limited liability company, corporation, public entity or subsidiary thereof within the state.

The Security Guard Act defines “security guard” as “a person, other than a police officer, employed by a security guard company to principally perform one or more of the following functions within the state:

- a. protection of individuals and/or property from harm, theft or other unlawful activity;
- b. deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to unlawful or unauthorized intrusion or entry, larceny, vandalism, abuse, arson or trespass on property;
- c. street patrol service;
- d. response to but not installation or service of a security system alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage and other losses and/or to maintain security of a protected premises.”⁷

However, a security guard who is otherwise subject to regulation with respect to registration and training by the federal government in the performance of their duties, or a security guard providing such services on a voluntary basis, are not subject to the Security Guard Act.⁸

Individuals are required to obtain a license from the Department in order to engage in the business of private investigation or advertise their business as a private investigator.⁹

In order to carry out their duties as a private investigator, individuals may be required to investigate criminal matters. Investigating criminal matters may place a private investigator at risk of physical harm by criminals who may try to cover up their crime in order to evade law enforcement. As explained above, private investigators are authorized to act as security guards, which may include duties such as responding to security system alarms which are triggered without knowing if they will be surprising a burglar who is armed with a weapon, as well as protecting people and property from harm or theft, which may also require defense against an armed intruder. The Department has already designated licensed security guard as an eligible profession.

⁵ General Business Law Article 7-A, §70(1); *See also, Matter of McCurdy*, 87 DOS 93 (holding, in part, “[a]private investigator is licensed to investigate and, pursuant to his right to engage in the business of watch, guard or patrol agency (GBL §70[1]), **to prevent the commission of crimes....**”(emphasis added).

⁶ General Business Law §71(3).

⁷ General Business Law §89(f)(6).

⁸ *Id.*

⁹ General Business Law §70(2).

Determination

The information set forth above supports a determination by the Department that the profession of a private investigator sometimes requires individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the profession of “private investigator” as an eligible profession and has added such profession to the Department’s list of eligible professions.